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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

CRIMINAL APPEAL NO.92/2006

[Single Bench: Hon'ble Mr. Justice Dhirendra Mishra]

APPELLANT (In Jail) — Pooran, son of Late Hungo., aged about 41 years, resident of Kasturpal, P.S. Mardoom, District Bastar.

Vs

RESPONDENT — The State of Chhattisgarh, through the Police Station Mardoom, District Bastar.

13.9.2007

This appeal is directed against the judgment of conviction and order of sentence dated 16th January, 2006 passed in S.T. No.327/05 whereby learned Sessions Judge, Bastar at Jagdalpur has convicted the appellant under Section 307 of the IPC and sentenced him to undergo R.I. for 5 years.

The case of the prosecution, in brief, is that on 29.7.2005 at about 8.40 a.m. complainant Karibai lodged the report in the Police Station Mardoom mentioning therein that on 28.7.2005 at about 1.30 a.m. in the night when she was asleep in her room, her husband-the appellant herein, assaulted her by an axe over her right & left hand & forehead and when she tried to ward-off the blows she sustained injuries over her fingers of right & left hand. Hearing her cries, her brothers-in-law namely Dashrath & Ganpat came to her room whereupon the accused fled from the place of incident. After registering the FIR the complainant was sent for medical examination

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to Community Health Centre, Lohadiguda where Dr. Narain Singh (PW-6) examined her and gave his injury report of Ex.P-8. Looking to the precarious condition of the complainant, she was admitted in the hospital on 29.7.2005 itself where she received treatment as an indoor patient from 29.7.2005 to 1.8.2005. Weapon of offence i.e. axe was taken into possession on being produced by the appellant on 31.7.2005.

After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur. During trial, the prosecution examined eight witnesses in all, thereafter the statement of accused was recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him and stated that he is innocent and has been falsely implicated in the crime. However, learned Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the appellant as mentioned herein above.

Learned counsel for the appellant submits that from perusal of the statement of the complainant it would be evident that the allegation is that the assaults were made while she was asleep and the complainant has claimed that after receiving the injuries she got fainted and there is evidence that it was a dark night and there was no source of light in the room, therefore, there was no occasion for

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the complainant to recognize the assailant, as the victim has claimed that she remained unconscious for a period of three days and regained the consciousness only when she was admitted in the hospital. He further argued that even other witnesses namely Dasrath (PW-2) & Ganpat (PW-3) have also reached the place of incident only after the accused had allegedly left the room and they have deposed on the basis of information given by the complainant. It was also argued that the axe in question was in fact seized from the Village Kotwar, however, the seizure memo shows that the weapon of offence was seized on being produced by the accused. It was further argued that Dr. Narain Singh (PW-6), who examined the complainant after the incident, has though opined that Injuries No.1 to 4 were grievous in nature, however, he has stated that definite opinion could be given only after obtaining X-ray report. However, the complainant was not subjected to X-ray examination and therefore, the prosecution has failed to prove that the injuries caused by the appellant were sufficient to cause death in ordinary course of nature and therefore, offence under Section 307 is not made out.

On the other hand, learned counsel for the State supported the impugned judgment.

I have heard learned counsel for the parties. I have perused the impugned judgment as also the evidence available on record.

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Complainant Kari Bai (PW-1) has stated that on the date of incident she, her husband i.e. the appellant and other family members were asleep after taking their meals. Her brothers-in-law Dasrath, Ganpat & Madda were also asleep. While she was asleep, all of a sudden in the night her husband got up and assaulted her by an axe as a result of which she sustained injuries over her forehead, fingers of both the hands & wrist and she fainted. On the next day, she was taken to the Maharani Hospital, Jagdalpur where she was admitted for a period of two weeks for the treatment of injuries. She was interrogated by the police in the hospital and on the basis of her report, FIR of Ex.P-1 was recorded. She has admitted in the cross-examination that there is no electricity connection in their house and while sleeping they put off the kerosene lamp. She has stuck to her claim that assaults were in fact inflicted by her husband i.e. the appellant, though she has stated in Para 4 that she could not see at the time of assault.

Dasrath (PW-2) has also stated that on hearing the cries of Karibai they all woke up and saw that Karibai was fainted. Accused had fled from there and went to the house of Kotwar. They provided water to Karibai and in the morning they brought her to Maharani Hospital, Jagdalpur where she was admitted for a period of two months. Karibai had informed that Pooran assaulted her with an axe.

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He has further stated that the axe was seized vide Ex.P-2 from the Village Kotwar, which bears his signature. Similar is the statement of Ganpat (PW-3).

First of all, the nature of the injuries sustained by the complainant Karibai has to be seen. Dr. Narain Singh (PW-6) who has examined the complainant and proved the report of Ex.P-8, has stated that the victim sustained incised injury over Indus finger of right hand and incised injuries over middle & little fingers of right hand. She also sustained lacerated wound over her forehead of size 2"x0.4cm, another lacerated wound on the occipital region of skull of size 2"x0.3cm. He has further described Injuries No.1 to 4 as grievous in nature, however, he has stated that definite opinion could be given only after X-ray report is obtained.

So far as the arguments of learned counsel for the appellant that X-ray report is not available in the record and therefore there is no evidence available on record to show that the accused had the intention to cause death of the complainant is concerned, for the purpose of inferring the intention the weapon of offence, the force with which the assault is made and the part of the body where the victim is assaulted is to be considered. In the instant case, a lethal weapon of axe has been used for assaulting the complainant, who has sustained injuries over both her hands as also on the forehead and

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skull, therefore, looking to the manner in which assaults have been made and the weapon used for the assault, this court of the considered opinion the trial court has rightly inferred that the intention of the accused was to commit murder of Karibai.

Now coming to the next question whether the prosecution has been able to establish the involvement of the appellant in crime in question. It is true that there are some discrepancies in the statement of witnesses that the assaults were made while the complainant was asleep, as she has stated that the assaults were made while she was asleep and after receiving injuries she became unconscious. However, considering the fact that the complainant has categorically stated that she and her husband as also other family members were in the home and asleep in the night of incident and all of sudden, while she was asleep, the accused woke up and started assaulting her, it can be reasonably inferred that the complainant had the occasion to see the assailant, who was none other than her own husband. Her statement is duly corroborated by the statement of her brothers-in-law, who were in fact real brothers of the appellant and have categorically stated that after the incident the complaint told them that her husband assaulted her with an axe. Her statement is further corroborated by the promptly lodged FIR and therefore, in the considered opinion of this Court on the basis of evidence of the

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complainant and other two witnesses the prosecution has proved the offence beyond reasonable doubt and there is no infirmity or illegality in the impugned judgment of the trial court convicting and sentencing the appellant under Section 307 of the IPC.

In the result, the appeal being devoid of any substance is liable to be dismissed and it is hereby dismissed.

Sd/-
Dhirendra Mishra
Judge